

STATE OF MICHIGAN
BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:
HON. JAMES P. NOECKER
Judge 45th Circuit Court,
Centreville, Michigan 49032

FORMAL COMPLAINT NO. 73

MASTER'S REPORT

John N. Fields (P26641)
Master
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BACKGROUND

The Michigan Judicial Tenure Commission, represented by Examiner Paul J. Fischer, filed a three-count complaint on August 20, 2003 against the Hon. James P. Noecker, 45th Circuit Court Judge, Centreville, Michigan (Respondent) who is represented by Attorney Peter D. Houk.

Count I of the complaint alleges that Respondent's Persistent Use of Alcohol constituted:

- a. Misconduct in office, as defined by the Michigan Constitution of 1963, Article VI, Section 30, as amended, and MCR 9.205;
- b. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, Article VI, Section 30, as amended, and MCR 9.205;
- c. Habitual intemperance as defined by the Michigan Constitution of 1963, Article VI, Section 30, as amended, and MCR 9.205;
- d. Persistent failure to perform judicial duties, as defined by the Michigan Constitution of 1963, Article VI, Section 30, as amended, and MCR 9.205;
- e. Persistent neglect in the timely performance of judicial duties, contrary to MCR 9.205 (B)(1)(b);
- f. Irresponsible or improper conduct which erodes public confidence in the judiciary, contrary to the Code of Judicial Conduct, Canon 2A;
- g. Conduct involving impropriety and the appearance of impropriety, contrary to the Code of Judicial Conduct, Canon 2A;
- h. Failure to respect and observe the law, contrary to, among others, MCR 8.107 and MCR 8.110(C)(5); and
- i. Conduct violative of MCR 9.104(1), and (2) in that such conduct:
 - (i) is prejudicial to the proper administration of justice;
 - (ii) exposes the legal profession or the court to obloquy, contempt, censure or reproach.

Count II of the Formal Complaint alleges Violations of the Law and Making False Statements to the Police and claims that the conduct constitutes;

- a. Misconduct in office, as defined by the Michigan Constitution of 1963, Article VI, Section 30, as amended, and MCR 9.205;
- b. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, Article VI, Section 30, as amended, and MCR 9.205;
- c. Irresponsible or improper conduct which erodes public confidence in the judiciary, contrary to the Code of Judicial Conduct, Canon 2A;
- d. Conduct involving impropriety and the appearance of impropriety, in that respondent's conduct evidenced or gave the appearance he had consumed alcoholic beverages which caused or contributed to the incident contrary to the Code of Judicial Conduct, Canon 2A;
- e. Failure to respect and observe the law, contrary to, among others, MCL 257.626 b (careless driving), MCL 257.625 (driving under the influence of intoxicating liquor), and the Code of Judicial Conduct, Canon 2B; and
- f. Conduct violative of MCR 9.104(1), (2), and (3) in that such conduct:
 1. is prejudicial to the proper administration of justice;
 2. exposes the legal profession or the court to obloquy, contempt, censure or reproach; and
 3. is contrary to justice, ethics, honesty or good morals.

Count III of the Formal Complaint alleges Respondent made False Statements To The Judicial Tenure Commission. The Complaint claims that Respondent's conduct constitutes:

- a. Misconduct in office, as defined by the Michigan Constitution of 1963, Article VI, Section 30, as amended, and MCR 9.205;
- b. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, Article VI, Section 30, as amended, and MCR 9.205;

- c. Failure to cooperate with a reasonable request made by the Commission in its investigation of a judge, contrary to MCR 9.205(B)(1)(f);
- d. Irresponsible or improper conduct which erodes public confidence in the judiciary contrary to the Code of Judicial Conduct, Canon 2A;
- e. Conduct involving impropriety and the appearance of impropriety, contrary to the Code of Judicial Conduct, Canon 2A; and
- f. Conduct violative of MCR 9.104(1), (2), and (3) in that such conduct:
 - (i) is prejudicial to the proper administration of justice;
 - (ii) exposes the legal profession or the court to obloquy, contempt, censure or reproach; and
 - (iii) is contrary to justice, ethics, honesty, or good morals.

The Respondent filed an Answer on or about September 16, 2003. The Michigan Supreme Court entered an Order on September 3, 2003 appointing retired 2nd Circuit Court Judge John N. Fields to serve as Master in this case. Various telephone conference calls between counsel and the Master were held, a pre-trial conference was held, a Scheduling Order was entered and pre-trial hearings were held at the Calhoun County Courthouse. The Public Hearing was held on January 13, 14, 15, 20, 21 and 22, 2004 in Kalamazoo, Michigan. Upon completion of the Public Hearing counsel stipulated to the submission of written closing arguments and proposed findings of fact and conclusions of law as well the right of each party to submit a written rebuttal argument. Counsel stipulated that the Master shall submit this report to the Judicial Tenure Commission by April 30, 2004.

RELEVANT LAW

- **Article VI, Section 30(2)** provides: “on recommendation of the judicial tenure commission, the supreme court may censure, suspend with or without salary, retire or remove a judge for conviction of a felony, physical or mental disability which prevents the performance of judicial duties, misconduct in office, persistent failure to perform his duties, habitual intemperance or conduct that is clearly prejudicial to the administration of justice. The supreme court shall make rules implementing the section and providing for confidentiality and privilege of proceedings”

- **MCR 9.205** provides:
 - a. (A) Responsibility of Judge. A judge is personally responsible for the judge's own behavior and for the proper conduct and administration of the court in which the judge presides.
 - b. Grounds for Action. A judge is subject to censure, suspension with or without pay, retirement or removal for conviction of a felony, physical or mental disability that prevents the performance of judicial duties, misconduct in office, persistent failure to perform judicial duties, habitual intemperance, or conduct that is clearly prejudicial to the administration of justice.
 - (1) Misconduct in office includes, but is not limited to:
 - (a) persistent incompetence in the performance of judicial duties;
 - (b) persistent neglect in the timely performance of judicial duties;
 - (c) persistent failure to treat persons fairly and courteously;
 - (d) treatment of a person unfairly or discourteously because of the person's race, gender or other protected personal characteristics;
 - (e) misuse of judicial office for personal advantage or gain, or for the advantage or gain of another; and
 - (f) failure to cooperate with a reasonable request with the commission in its investigation of a judge.
 - ...(3) In deciding whether action with regard to a judge is warranted, the commission shall consider all the circumstances, including the age of the allegations and the possibility of unfair prejudice to the judge because of the staleness of the allegations or unreasonable delay in pursuing the matter.

- **Michigan Code of Judicial Conduct Canon 2** provides in pertinent part: “A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities.
 - A.** Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.
 - B.** A judge should respect and observe the law. At all times the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary. Without regard to a person’s race, gender or other protected personal characteristics, a judge should treat every person fairly with courtesy and respect. ... “
- **MCR 8.107 Statement By Trial Judge As To Matters Undecided** provides, “Every trial judge shall, on the first business day of January, May, and September of each year, file with the state court administrator a certified statement in the form prescribed by the state court administrator, containing full information on any matters submitted to the judge for decision more than four months earlier which remains undecided. The judge shall also set forth in the statement the reason the matter remains undecided. For the purpose of this rule the time of submission is the time the last argument or presentation in the matter was made or the expiration of the time allowed for filing the last brief, as the case may be. If the judge has no cases to report, the word “none” on a signed report is required.
- **MCR 8.110(C)** provides, “...(5) The chief judge of the court in which criminal proceedings are pending shall have filed with the state court administrator a monthly report setting forth the reasons for delay in proceedings:
 - (A)** in felony cases in which there has been a delay of 28 days between the hearing on the preliminary examination or the date of the waiver of the preliminary examination and the arraignment on the information or the indictment;
 - (B)** in felony cases in which there has been a delay of six months between the date of the arraignment on the information or the indictment and the beginning of trial;

(C) in misdemeanor cases in which there has been a delay of six months between the date of the arraignment on the on the warrant and complaint and the beginning of the trial;

(D) in felony cases in which a defendant is incarcerated longer than six months and in misdemeanor cases in which a defendant is incarcerated longer than 28 days.

- **MCR 9.104 Grounds for Discipline in General; Adjudication Elsewhere provides:**

(A) The following acts or omissions by an attorney, individually or in concert with another person, are misconduct and grounds for discipline, whether or not occurring in the course of an attorney-client relationship.

- (1) Conduct prejudicial to the proper administration of justice;
- (2) Conduct that exposes the legal profession or the courts to obloquy, contempt, censure or reproach;
- (3) Conduct that is contrary to justice, ethics, honesty, or good morals;
- (4) Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court;
- (5) Conduct that violates a criminal law of a state or of the United States; ...

- **MCR 9.211 provides in pertinent part:**

(A)**Procedure.** The public hearing must conform as nearly as possible to the rules of procedure and evidence governing the trial of civil actions in the circuit court. The hearing must be held whether or not the respondent has filed an answer or appears at the hearing. The examiner shall present the evidence in support of the charges set forth in the complaint and at all times have the burden of proving the allegations by a preponderance of the evidence...”

SUMMARY OF SIGNIFICANT EVIDENCE PRESENTED AT THE PUBLIC HEARING

STIPULATIONS OF FACT

1. Respondent spoke to Kathy Jessup, a free-lance journalist whose articles appear in the Kalamazoo Gazette, the Sturgis Journal, and others, on March 13, 2003 or March 14, 2003. He told her that:
 - a. he had stopped at his wife's business before the crash;
 - b. he had gotten into his car from the passenger side because the driver's side was muddy;
 - c. he had driven from his wife's business to Lacy's/Klinger's Party Store straddling the vehicle's console;
 - d. he had accidentally pushed the accelerator when he meant to step on the brake.
2. These statements were disseminated in newspaper articles in the Kalamazoo Gazette, the Sturgis Journal, and others.
3. On March 13, 2003, Mark Alberts, a reporter for News 3 based in Kalamazoo, interviewed the Respondent at the courthouse.
4. The Respondent said that:
 - a. he had inadvertently hit the gas pedal instead of the brake pedal; and
 - b. he denied using alcohol before the crash.
5. These statements were disseminated on News 3 television.
6. On March 12, 2003 Respondent was presiding over the criminal trial captioned *People v Jonathan Love, Case No. 02-11207-FH*.
7. The matter recessed at 2:30 p.m. on March 12th and was scheduled to reconvene the next day at 9:00 a.m.
8. The Respondent left the courthouse at approximately 3:30 p.m. on March 12, 2003.
9. Prosecutor Douglas Fisher spoke to the Respondent later that day at approximately 4:30-4:45 p.m.

SUMMARY OF OTHER SIGNIFICANT EVIDENCE PRESENTED AT THE PUBLIC HEARING

Respondent is a Judge of the 45th Circuit Court, St. Joseph County, Michigan. He was appointed to that position in 1981. Previously he served for two years as an Assistant Prosecuting Attorney and for approximately ten years as Prosecuting Attorney of St. Joseph County, Michigan.

Kevin Bowling State Court Administrative Office (SCAO) Region II Representative from December 1985 through May 1998 testified that St. Joseph County, Michigan was part of Region II. His duties and responsibilities included assisting judges within Region II. Mr. Bowling testified that Respondent periodically failed to timely file MCR 8.107 Statements of Matters Undecided. He had to send several letters to Respondent requesting overdue statements be filed. (Exhibits 36 – 40). Mr. Bowling also testified that although Respondent served as Chief Judge of the Circuit Court he frequently failed to attend Judicial Council meetings. Mr. Bowling estimated that Respondent attended approximately 10-15% of the scheduled meetings which were intended for discussion of budget matters, scheduling and other matters of mutual concern. Additionally, Mr. Bowling testified that Respondent attended approximately 15% of Regional Circuit Judges meetings which were usually held in Battle Creek.

Mr. Bowling received complaints alleging that Respondent failed to be regularly present at the courthouse during normal court hours. Various complaints indicated that Respondent was periodically absent during the a.m. hours, p.m. hours and, on occasion, absent for the entire day. In September or October of 1994 Mr. Bowling received a telephone call from a member of Respondent's staff. As a result of the telephone call Mr. Bowling told the staff member to have Respondent wait at the courthouse for Mr. Bowling. Mr. Bowling arrived at the courthouse approximately 45-60 minutes later. Respondent, however, was not at the courthouse. Mr. Bowling located Respondent at Respondent's residence and he and Respondent had a discussion for a "couple of hours" and discussed how drinking had an impact on the court. Respondent advised that he drank occasionally to reduce job stress but denied that drinking was having an impact on his job performance. Mr. Bowling testified that he sought to assist Respondent in obtaining treatment as well as to cover the court docket.

In November of 1994, Respondent entered an inpatient treatment program at WEMAC in Grand Rapids, Michigan. Respondent was at the facility for a period of three weeks. Respondent returned to WEMAC and received further treatment from January 1995 through May 4, 1995. Mr. Bowling said that after Respondent returned in the spring of 1995, the treatment in some ways gave Respondent "a new lease on life." Unfortunately, Respondent suffered a heart

attack on December 23, 1995 and was off work for heart related reasons until April or May of 1996.

Mr. Bowling stated that the 45th Circuit Court did not have the financial resources that some other courts received. Low salaries often caused turnover among staff and Respondent did not have the assistance of a full-time administrator that is available to some other single judge courts.

James Hughes testified that he has served as the State Court Administrative Office Region II Representative since August of 1998. Mr. Hughes indicated that although due on a monthly basis, he did not receive any MCR 8.110 Speedy Trial Reports signed by Respondent from August of 1998 through September, 2000. The first such report received by Mr. Hughes from Respondent was submitted for the month of October 2000. It listed 59 delayed (as defined by court rule) criminal cases (exhibit 31). MCR 8.110 Reports were submitted by Respondent for most months thereafter. They reflect as follows:

<u>Date</u>	<u>Cases</u>	<u>Date</u>	<u>Cases</u>
10/00	59	01/02	49
11/00	55	02/02	42
12/00	no report	03/02	45
(Exhibit #31)		04/02	48
		05/02	53
01/01	48	06/02	49
02/01	25	07/02	45
03/01	13	08/02	66
04/01	12	09/02	no report
05/01	10	10/02	42
06/01	38	11/02	no report
07/01	41	12/02	29
08/01	39	(Exhibit 29)	
09/01	34		
10/01	no report	1/03	24
11/01	28	2/03	18
12/01	no report	3/03	no report
(Exhibit 30)		4/03	12
		5/03	3
		(Exhibit 28)	

In approximately 1990, an additional District Judgeship (filled by Judge William Welty) was authorized for St. Joseph County. In addition to handling District Court matters Judge Welty agreed to handle all of the 45th Circuit's domestic relations matters. He continued to do so until 2002. At that time, Respondent began handling DO cases (divorces without children) and does so at

the present time. Judge Welty continues to handle the other types of domestic relations matters.

During his testimony, Mr. Hughes compared the number of cases pending more than two years in St. Joseph County, Michigan with those of Barry County, Cass County, Isabella County, Shiawassee County, and Tuscola County. Each is a single judge circuit and each judge handled domestic relations matters, with the exception of Tuscola County. Exhibit 56 reflects that during the period of 1998 to 2001 when compared with these similar courts the 45th Circuit Court had nearly the highest number of delayed criminal cases pending two years or more. This high number occurred despite the fact Respondent was not handling any domestic relations matters until he began handling DO cases in 2002. Mark Kutas, an Administrator with the Eaton County Circuit Court testified on behalf of Respondent and was qualified by the Master as an expert in court administration and filing of Case-flow Reports. He testified that he compared nine other single judge circuits with St. Joseph County. The courts reviewed by Mr. Kutas included Hillsdale, Barry, Branch, Isabella, Sanilac, Cass, Delta, Huron and Emmitt County. Among other matters, he testified regarding comparisons of "clearance rates". According to Mr. Kutas' comparisons the clearance rate of cases by Respondent when compared to these courts ranged from worst (1999 & 2001) to fourth best among the ten courts (2003). (Exhibit E)

Mr. Hughes testified that in the fall of 2000 the situation involving Respondent took a change for the worse. About that time, Mr. Hughes was contacted by a judge from another circuit who expressed concern regarding "some odd behavior" exhibited by Respondent at the annual judicial conference. Additionally, Mr. Hughes had received various complaints and concerns from litigants and citizens regarding the slowness of pace of the cases, some erratic behavior and other such things including complaints regarding Respondent's absence from the court, tardiness and irregular hours. Mr. Hughes also noted that Respondent often times would not attend local Judicial Council meetings of the judges of St. Joseph County. As a result, Mr. Hughes spoke with the director of the State Bar of Michigan Lawyers and Judges Assistance program. Mr. Hughes testified that, "...the director Mr. Livingston, myself and two judges who were part of the Lawyers and Judges Assistance Program, came to Centreville to the courthouse and we met with Judge Noecker in the conference room there in his office, discussed these concerns and discussed the potential for assistance and the (sic) discussed the potential for entering into a voluntary monitoring agreement whereby the judge would adhere to a program of counseling and meetings, and he basically agreed to that." (T. pg 636) As a result, the Lawyers and Judges Assistance Program drafted an agreement which included several components and Respondent voluntarily signed it on January 16, 2001. The agreement was to cover a period of two years, until January, 2003. (Exhibit 35)

In addition to other requirements, the agreement required Respondent to submit to random drug and alcohol screening tests within six hours of notification.

Mr. Hughes was ultimately designated to monitor the testing. In the course of the contract Mr. Hughes sought to have Respondent take a test, "probably a dozen and a half times." (T. pg 638). On three occasions Respondent was requested to do a urine drop within six hours and he did so. On two occasions Respondent spoke with Mr. Hughes and did not test. Respondent testified that he did not test on one occasion because he was ill and did not test on another occasion because he was busy with a court motion. Mr. Hughes indicated on the other occasions he was unable to actually speak with the Respondent to request testing. If Respondent was not immediately available at his office Mr. Hughes did not leave a message with staff due to the confidentiality of the agreement. (T. pgs. 638-642.)

Respondent drafted a Caseflow Management Plan that was submitted to SCAO in March of 2002 and thereafter approved. Mr. Hughes testified that he recommended the approval of the plan even though it did not include a requirement for a "next action date". Mr. Hughes stated that he recommended approval "...because they were an improvement on what was nothing." Mr. Hughes continued, " There was no case flow management plan in the Circuit Court and the initiation of our help in developing one was as a result of the problems that became identified that we have talked about earlier with respect to the Speedy Trial Reports and the 8.107." (T. pg 655).

Mr. Hughes testified that as a result of Respondent's alleged problems in 2001 he recommended that Respondent be removed as Chief Judge. However, no action was taken at that time. Mr. Hughes confirmed that the current Judicial Tenure Commission complaint was filed by the State Court Administrative Office. Mr. Hughes said that during his time as Region II representative he had spent more time seeking to address matters with Respondent than with any of the other approximately 160 judges within the region.

Judge Philip D. Schaefer, a Circuit Judge from Kalamazoo County, was appointed Chief Judge of the 45th Circuit Court on March 24, 2003 and he served in that capacity until December 31, 2003. He testified that following his appointment as Chief Judge he reviewed the 45th Circuit Court's records and determined that there were 27 pending civil cases that had been filed during the years 1996,1997,1998,1999 and 2000. He further testified that Respondent had averaged 42 and one-half cases on the MCR 8.110 Speedy Trial Report between January 2002 and February 1, 2003. Accordingly, Judge Schaefer instituted an expedited trailer docket that he referred to as a " rocket docket". With the assistance of Judge Welty and visiting judges, Judge Schaefer was able to reduce the number of cases on the Speedy Trial Report to three by May 1, 2003. Judge Schaefer commented that, in some cases, there were good reasons for the delay. However, in general, he felt that the older cases could have been disposed of a lot sooner if Respondent had paid appropriate attention to the importance of calendaring and including next action dates.

Judge Schaefer stated that he directed Respondent to “personally” notify him when Respondent was discharged from WEMAC. Judge Schaefer testified that Respondent failed to personally notify him and that he didn’t learn that Respondent had been discharged from WEMAC for several days thereafter until he received notice from Attorney Houk.

Several attorneys, who are attorneys of record on the cases that had been filed more than two years earlier, testified that there were a variety of reasons for the delay in the cases, e.g. third-party actions, bankruptcy stays, etc. Each attorney stated that Respondent was always courteous, patient and very meticulous in his rulings. None indicated that they had ever seen or had reason to believe that Respondent had been drinking or was intoxicated while on the bench. Mark Brown, the 45th Circuit Court Administrator/Law Clerk since the mid-1990s testified that Respondent had told him in the mid 1990s that Respondent was an alcoholic. Mr. Brown stated that he has never known Respondent to drink during the workday and that he has never seen Respondent intoxicated in court.

EVENTS OF MARCH 12, 2003

Evidence was presented at the hearing that indicated Respondent was conducting a criminal jury trial on March 12, 2003. Respondent adjourned the trial for the day at approximately 2:30 p.m. following a Motion for A Directed Verdict which Respondent took under advisement. Respondent left the court at approximately 3:30 and went to his residence. Respondent testified that he worked on the opinion on his computer located at his residence. He stated that he called Administrator/Law Clerk Mark Brown at 3:47 p.m. to discuss the language he would use in the opinion and that he also telephoned Prosecutor Douglas Fisher to advise him of the ruling. Respondent stated he left his home at approximately 4:30-4:45 p.m. to obtain firewood from his wife’s warehouse located near the Klinger Lake Trading Post in White Pigeon Township, St. Joseph County, Michigan.

Respondent testified that he got “mud on his shoes” while at the warehouse. He stated that he did not want to get the mud in his car. Thus, when leaving the warehouse he got into his car on the passenger side, slid over the center console placing his buttocks on the passenger seat and kept his right leg straddled across the center console. He testified that he used his left foot to accelerate and brake because his right foot remained straddled over the center console. Respondent indicated he drove the approximately 50 yards in this manner to the Klinger Lake Trading Post where his vehicle struck the building resulting in damage of approximately \$15,000 – \$20,000 to the building and contents.

Several people were present at the Klinger Lake Trading Post at the time Respondent’s vehicle collided with the building. Harry West testified that he was outside the building at the time of the collision. Mr. West, who has known

Respondent for many years stated that Respondent was “sitting behind the driver’s wheel....directly behind the wheel”...(T.- pg. 44).

Denny Seager, Sr. testified that he was also outside the building at the time Respondent’s vehicle collided with the building. He was asked by Examiner Fischer:

- Q: Where was he seated in the car, in the vehicle?
- A. Behind the driver’s seat.
- Q: Did you see him move from any other part of the car to get to the driver’s seat?
- A. No, Sir. (T. - pg. 135)

Scott Carpenter was also outside at the time Respondent’s vehicle collided with the building. He was asked by Examiner Fischer:

- Q: Did you see where he was seated in the car?
- A. He appeared to be seated upright on the driver’s side.
- Q: Did you see him move at all from the passenger side to the driver’s side?
- A. No.
- Q: Did you see him move from perhaps the middle of the car or the console area to the driver’s side?
- A. I did not observe that. (T-pgs. 106-107)

Janice Pankey, co-owner of the Klinger Lake Trading Post, was inside the building at the time of the collision. Although she did not see the collision occur she stated that immediately after the collision she looked up through a window and saw Respondent in his vehicle. Examiner Fischer inquired:

- Q. Where was he seated in the vehicle?
- A. In the driver’s seat.
- Q: How was he seated?
- A. Sitting up. (T- pg. 161)

Evidence reflects that Respondent was traveling a relatively slow rate of speed at the time he collided with the building. It further reflects that Respondent appeared to be traveling at an approximately constant speed after turning into the parking lot until colliding with the building. Mr. West stated, “...(he) did not even slow down, and collided with the building.” (T- pg. 41). He further stated that Respondent was traveling “...3-5 miles an hour.” (T – pg. 41).

Scott Carpenter testified when asked by Examiner Fischer:

- Q: What happened?
A. It just – it didn't appear that the vehicle had slowed down and it just ran into the building.
Q: You know approximately how fast it was going?
A. It wasn't going drastically fast, but it did not slow down whatsoever.

The Master: It did not what?
The Witness: Slow down

- By Mr. Fischer: Did it speed up?
A. No. (T- pgs. 105-106)

Mr. West, who previously owned a bar and has known Respondent for a long time, stated, "when Jim has had a few drinks in him he will walk heel and toe. And lean slightly forward and walk a little bit like a quick walk forward... I would say the walk that he went into the store with is more or less when he's had drinks and relaxed a little bit." (T-pgs. 51-52). Mr. West went on to state, "...I did not smell alcohol on him, but I felt he had been drinking." (T-pg.83). When testifying regarding his conversation with Trooper Wheeler on March 12, 2003, Mr. West stated "...Then he asked me did I think the Judge had been drinking. And I answered yes. And I specifically stated that his face was red and due to his walk up to the front door that I observed I felt that he had been drinking." (T- pgs. 84-85). Mr. West went on to state, "I do believe that Judge Noecker was drinking at the time of the crash." (T- pg. 91). And he stated, "I have had experience with Mr. Noecker and I have seen him both very sober and I have seen him very drunk..." (T- pg.95).

Denny Seager, Sr. has worked in a bar for 20 years. He was asked by Examiner Fischer:

- Q: Did you notice anything about the way he was walking?
A. I'd say he wasn't walking real straight.
Q: Would you say he was staggering?
A. In a way, yes.
Q: Well you tell me how was it you thought he was walking.
A. It wasn't straight, but he wasn't really staggy or anything like that.
Q: Was he at all wobbly?
A. A little bit. (T – pgs. 135-136).

After the collision Respondent walked into the building. He stood a few feet inside the doorway and apologized to Ms. Pankey and offered to pay for the damages. Ms. Pankey state she wanted her husband, who was ice fishing. Respondent then said that he was going to look for her husband and Respondent immediately left despite being urged by a witness to remain. Respondent testified

that he attempted to find Mr. Pankey at three locations on the lake but was unable to find him. Thereafter, Respondent drove to his residence and arrived home prior to 6:00 p.m.

Respondent testified that while at home his wife took his blood pressure which registered a very high reading. Respondent stated that he decided to drink vodka to bring his blood pressure down. He stated that he drank 3-5 ounces of vodka which took about 5-10 minutes to drink.

Michigan State Police Trooper Craig Wheeler testified that he was dispatched to the Klinger Lake Trading Post. Respondent had left the Klinger Lake Trading Post prior to the time that Trooper Wheeler arrived. Trooper Wheeler spoke with Ms. Pankey and other witnesses. He then went to the Michigan State Police post at White Pigeon and spoke with Sgt. Steven Barker. After his discussion with Trooper Wheeler, Sgt. Barker decided that he and Trooper Wheeler should go to Respondent's residence. Upon arrival at Respondent's residence Trooper Wheeler spoke with Mrs. Noecker and Sgt. Barker spoke with Respondent. Sgt. Barker testified that he could smell a slight odor of alcohol on Respondent's breath. He also testified that Respondent appeared to be attempting to keep a distance between Respondent and Sgt. Barker. According to Sgt. Barker, Respondent would walk away when Sgt. Barker would seek to stand near Respondent and Respondent would pace in a manner seeking to keep a distance from Sgt. Barker. Sgt. Barker testified that he asked Respondent to take a preliminary breath test. Respondent agreed and took a test at 7:22 p.m. which reflected a reading of .10¹. (If the preliminary breath test results are not admissible the Master's findings of fact and conclusions of law will be unchanged due to the substantial nature of the other admissible evidence in this case.)

Respondent has stated that he has realized he is an alcoholic since 1994. However, he doesn't believe his drinking has affected his work at the court.

¹ At a pretrial hearing the Master denied Respondent's Motion to Amend the Answer. The Master ruled that MCR 2.111(E) provides that allegations that require a responsive pleading are admitted if not denied in the responsive pleading and affirmative defenses must be specifically pled with the Answer. Additionally, MCR 9.209(B) requires that affirmative defenses be stated within the Answer or they will not be considered. Respondent, in paragraph 18 of his Answer admitted that he had taken a preliminary breath test with a result of .10 and did not state an affirmative defense with respect to this matter. In the event the Master's ruling that Respondent's admission is binding is incorrect, the Master conducted a separate evidentiary hearing on January 8, 2004 to determine whether the Administrative Rules for taking a preliminary breath test had been complied with. At the conclusion of the hearing the Master ruled that the police failed to determine that Respondent had not placed anything in his mouth, regurgitated, burped, etc. for a period of 15 minutes prior to the test as required by Administrative Rule R 325.2655(2)(b). If the Master is correct in ruling that the admission is binding, the ruling at the evidentiary hearing regarding compliance with the Administrative Rules is moot. If the Master is incorrect that the admission is binding, the ruling that the Administrative Rules were not complied with would result in the PBT being suppressed.

Respondent testified that he doesn't drink between 8:00 a.m. and 5:00 p.m. and that he would not drink the night before a trial. He stated that he was periodically absent from the court because he would work at his residence on court opinions. He stated that his computer at home was faster than the one at work and that he had fewer distractions at home than at the court. He also stated that his failure to file MCR 8.110 Speedy Trial Reports prior to November 2000 was due to the fact that the Prosecutor's Office actually scheduled the criminal trials and the court didn't have the means to prepare the reports. He stated that the Prosecutor's Office currently continues to schedule the criminal trials but fills out the MCR 8.110 forms for Respondent which he signs and submits to SCAO. He partially attributed the delays in completion of proceedings to the fact that he writes a substantial number of very precise written opinions.

Respondent stated that he once again began drinking on January 1, 1998. Respondent advised that he previously believed it was possible to control his drinking. He further stated that over the past few years his drinking only occurred at his residence.

Harvey Ager, M.D. is a Board Certified Psychiatrist who is the former co-director of the alcoholism unit at Detroit Memorial Hospital. Approximately 40% of his practice is devoted to clinical work and 60% of his practice is devoted to evaluations. About 4% of the clinical portion of his current practice involves alcohol. Dr. Ager testified that he examined Respondent in December 2003. Respondent stated to Dr. Ager that his drink of choice was vodka and that his last drink occurred on March 28, 2003. Dr. Ager testified that alcoholics generally have issues with attendance, deadlines, instability in work performance, disorganization, and difficulty with attending meetings. Dr. Ager stated that Respondent at first denied and later admitted drinking while on the State Bar of Michigan Lawyers and Judges Assistance Program. Respondent also strongly denied abusing alcohol. Citing Respondent's significant denial and that past treatment programs have not been successful, Dr. Ager indicated that Respondent's prognosis is "guarded at best". He stated that he believes Respondent is motivated in the short-run. However, he stated in the long run the prognosis is much more unclear.

Dr. Norman Miller, M.D. is a professor of psychiatry at Michigan State University. He is Board Certified in psychiatry, neurology, and addiction psychiatry, which is the study and treatment of people who suffer from addictive disorders. Dr. Miller's credentials and expertise are substantial. His practice is predominantly limited to the treatment of alcoholics and drug addiction. He examined Respondent on November 28, 2003. He was impressed by Respondent's intelligence which he stated was clearly in the "superior range". He indicated that Respondent's memory is in the normal range and Respondent shows no signs of dementia.

Dr. Miller testified that Respondent has “alcohol dependence” and has had it for a period of time. He also stated that Respondent has “obsessive-compulsive traits” which he explained means that Respondent is very meticulous and pays close attention to detail. Dr. Miller testified that Respondent admitted to a “loss of control” over alcohol. Dr. Miller indicated that some characteristics of some people with alcohol disorders include absenteeism, irregular hours, lack of focus, and lack of attention. He stated it is very common for alcohol dependents of the highest integrity to deny and minimize their use of alcohol.

Dr. Miller stated that he believes Respondent is a “motivated individual” who is taking and undergoing necessary treatment to get help. He indicated that Respondent seems to be committed to recovery and believes that Respondent’s prognosis is “quite favorable”. He urged that any monitoring treatment program have “consequences” if there is a failure to comply with the provisions.

SPECIFIC FINDINGS OF FACT

The Michigan Judicial Tenure Commission has the burden of proving the allegations by a preponderance of the evidence. MCR 9.211(A); In Re Ferrara, 458 Mich 350, 360 (1998). Following a review of the evidence as a whole, findings of fact are made as follows:

1. Respondent has been a judge of the 45th Circuit Court, St. Joseph County, Michigan since 1981. Respondent previously served for ten years as Prosecuting Attorney of St. Joseph, County, Michigan and two years as an Assistant Prosecuting Attorney.
2. Respondent currently has an alcohol dependence and has been a self-acknowledged alcoholic since 1994.
3. Respondent has attended or participated in several substance abuse treatment programs including:
 - A. WEMAC – 1994
 - B. WEMAC – 1995
 - C. State Bar of Michigan Lawyers and Judges Assistance Program – 2001 to 2003
 - D. WEMAC – March to April 2003. Respondent was asked to leave by WEMAC and did not successfully complete the program.
 - E. Hazelden in Center City, Minnesota – 2003
4. Respondent failed to file MCR 8.110 Speedy Trial Reports for several years until October 2000. Respondent’s claim that he did not have the ability to submit the reports prior to October 2000 due to the fact the Prosecuting Attorney schedules criminal cases is without merit because:

- a) the Court could have begun scheduling cases and keeping statistics rather than the Prosecuting Attorney's Office doing so or b) Respondent could have received statistical information from the Prosecutor's Office and, if satisfied that the information was accurate, signed and submitted the reports to the State Court Administrative Office. This later method is the procedure currently being utilized by the 45th Circuit Court.
5. The MCR 8.110 reports that were submitted usually reflected an unreasonably high number of cases that had encountered undue delay. Respondent's alcohol dependence was a causal factor in the undue delay in the handling and completion of cases.
 6. Respondent's MCR 8.107 Statement of Matters Undecided Reports periodically reflected an unreasonably high number of cases awaiting a decision more than four months after Respondent took the matters under advisement. Respondent also periodically failed to file the MCR 8.107 Reports timely although they were usually filed within a relatively short period of time after the due date.
 7. Respondent was periodically absent from the courthouse during normal court hours resulting in complaints to the State Court Administrative Office.
 8. Respondent infrequently attended scheduled Judicial Council meetings with other judges from St. Joseph County. He only attended approximately 10 to 15% of the meetings which were scheduled for the purpose of reviewing budgets, scheduling, and other matters of common concern.
 9. Respondent infrequently attended regional meetings of Southwestern Michigan circuit judges. He only attended approximately 15% of such meetings.
 10. Respondent's alcohol dependency was a proximate cause of Respondent's failure to periodically enter timely legal decisions in matters taken under advisement.
 11. Respondent's alcohol dependency was a proximate cause of Respondent's failure to conduct certain proceedings and complete cases within the time frames referenced in MCR 8.110 Reports.
 12. Respondent's lack of proper attention to appropriate case-flow management procedures was also a factor in the undue delay in the conduct of certain proceedings and completion of many cases.
 13. Although Respondent periodically failed to render decisions timely and frequently failed to conduct certain proceedings and complete cases in a

timely manner, many attorneys spoke favorably regarding Respondent's courteous treatment of counsel and litigants.

14. On March 12, 2003, Respondent adjourned a criminal jury trial at 2:30 p.m. after taking a Motion For A Directed Verdict under advisement.
15. Respondent left the courthouse at approximately 3:30 p.m. on March 12, 2003 and went to his residence.
16. Respondent telephoned Court Administrator/Law Clerk Mark Brown at approximately 3:47 p.m. on March 12, 2003 to discuss the language he would use in his opinion. Mr. Brown did not have any indication at that time that Respondent had been drinking.
17. Respondent telephoned Prosecuting Attorney Douglas Fisher at approximately 4:30 p.m. on March 12, 2003 to advise him of Respondent's decision on the Motion For A Directed Verdict. Mr. Fisher did not have any indication that Respondent had been drinking.
18. Shortly after 5:00 p.m. on March 12, 2003 Respondent drove to his wife's warehouse located approximately 50 yards from the Klinger Lake Trading Post in White Pigeon Township, St. Joseph County, Michigan.
19. Respondent left the warehouse and drove to the Klinger Lake Trading Post. At approximately 5:20 p.m. Respondent's vehicle collided with the Klinger Lake Trading Post building resulting in \$15,000 - \$20,000 damage to the building and its contents.
20. The collision of Respondent's vehicle with the building was witnessed by Harry West, Denny Seager, Sr. and Scott Carpenter who were outside the building at the time of the collision.
21. Janice Pankey, co-owner of the Klinger Lake Trading Post, was inside the building and looked up through a window immediately after the collision.
22. Respondent was seated in an upright position immediately prior to and immediately after his vehicle collided with the building.
23. Respondent did not speed up or significantly slow his vehicle down immediately prior to the collision with the building.
24. Respondent exited his vehicle on the driver's side and walked in a manner that indicated he had been drinking alcoholic beverages. Respondent entered the Klinger Lake Trading Post. He stood near the door and offered an apology to the co-owner Janice Pankey and stated he would pay for the damages.

25. Respondent's walk was a factor causing Harry West and Denny Seager, Sr. to believe Respondent had been drinking.
26. Janice Pankey stated that she wanted her husband who was ice fishing.
27. Respondent stated he would look for Mr. Pankey and left the store despite a statement by a witness that he should remain at the store.
28. Respondent returned to his residence without making contact with Mr. Pankey.
29. Michigan State Police Trooper Craig Wheeler was dispatched to the Klinger Lake Trading Post and spoke with individuals at that location. Respondent had left the store prior to Trooper Wheeler's arrival.
30. Trooper Wheeler returned to the Michigan State Police post in White Pigeon and spoke with Sgt. Steven Barker.
31. Sgt. Barker and Trooper Wheeler went to Respondent's residence and spoke with Respondent and Respondent's wife separately.
32. Respondent had a slight odor of alcohol when speaking with Sgt. Barker.
33. Respondent tried to maintain a physical distance between himself and Sgt. Barker while they were talking. He did so by stepping away from Sgt. Barker and pacing.
34. Respondent advised Sgt. Barker that :
 1. He had stepped in the mud while at his wife's warehouse.
 2. He had driven his vehicle from the warehouse approximately 50 yards to the Klinger Lake Trading Post.
 3. Respondent stated that his foot had slipped off the brake and onto the gas and his vehicle struck the side of the building.
 4. He went inside the Klinger Lake Trading Post.
 5. He unsuccessfully went to look for Mr. Pankey.
 6. He returned home.
 7. His wife took his blood pressure which registered a very high reading.
 8. His wife poured a glass of vodka for him.
 9. Respondent later stated that he poured his own glass of vodka rather than his wife pouring it for him.
 10. Respondent consumed the drink of approximately 3-5 ounces of vodka in an attempt to reduce his blood pressure.

11. He did not consume any alcohol prior to the collision with the building.
35. Respondent took a preliminary breath test at 7:22 p.m. which reflected a reading of .10.
36. Respondent stated that it never crossed his mind that he should stay at scene of the collision until the police arrived. Respondent is a judge and a former prosecuting attorney. This statement of Respondent is not credible.
37. Respondent stated he didn't think about the impact that consuming 3-5 ounces of vodka after he had arrived home would have upon his claim that he had not consumed alcohol before the collision at the Klinger Lake Trading Post. Respondent is a judge and a former prosecuting attorney. This statement of Respondent is not credible.
38. Respondent stated to the Michigan Judicial Tenure Commission that he had not consumed alcohol prior to the collision.
39. Respondent's statements to the media, police, the Michigan Judicial Tenure Commission and to the Master at the Public Hearing that he had not been drinking prior to the collision were not accurate.
40. Respondent consumed alcoholic beverages prior to the collision at the Klinger Lake Trading Post on March 12, 2003. Alcohol was a factor in the collision of Respondent's vehicle with the building.

CONCLUSIONS OF LAW

Following a review of the evidence as a whole, the Master makes the following conclusions of law and finds that Respondent's conduct constitutes:

1. Misconduct in office, as defined by the Michigan Constitution of 1963, Article VI, Section 30, as amended, and MCR 9.205;
2. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, Article VI, Section 30, as amended, and MCR 9.205;
3. Habitual intemperance, as defined by the Michigan Constitution of 1963, Article VI, Section 30, as amended, and MCR 9.205;

4. Persistent failure to perform judicial duties, as defined by the Michigan Constitution of 1963, Article VI, Section 30, as amended, and MCR 9.205;
5. Persistent neglect in the timely performance of judicial duties, contrary to MCR 9.205(B)(1)(b);
6. Failure to cooperate with a reasonable request made by the Commission in its investigation of a judge, contrary to MCR 9.205(B)(1)(f);
7. Irresponsible or improper conduct which erodes public confidence in the judiciary, contrary to the Code of Judicial Conduct, Canon 2A;
8. Conduct involving impropriety and the appearance of impropriety, contrary to the Code of Judicial Conduct, Canon 2A;
9. Conduct violative of MCR 9.104(1) and(2) and (3) in that such conduct:
 - (i) is prejudicial to the proper administration of justice;
 - (ii) exposes the legal profession or the courts to obloquy, contempt, censure or reproach; and
 - (iii) is contrary to justice, ethics, honesty, or good morals.

Respectfully submitted,

April 30, 2004

John N. Fields
Master